IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 125/2004 & 85/05

FIRST APPEAL NO.125/2004

Shri Jose Bismark Silveira
r/o. St. Mathias Malar,
Tiswadi, Goa. ..... Appellant.

V/s.

Special Land Acquisition Officer,
North Goa District,
(K.R.C. Ltd.,)
Panaji, Goa. ..... Respondent.

Mr. A.F. Diniz, Advocate for the appellant.

Mr. E. Afonso, Advocate for the respondent.

FIRST APPEAL NO.85/2005

1. Special Land Acquisition Officer,
Konkan Railway Corporation Ltd.,
Amey Guest House, Davorlim Road,
P.O. Navelim, Salcete, Goa 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawnfond, near Margao
Rawnfond, near Margao Railway Station,
Margao, Goa. ..... Appellants.

V/s.

Shri Jose Bismark Silveira
r/o. St. Mathias Malar,
Tiswadi, Goa. ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. A.F. Diniz, Advocate for the respondent.

CORAM : A.P. LAVANDE, J.

Date of reserving the Judgment : 24th March, 2005.

Date of pronouncing the Judgment : 31st March, 2005.

J U D G M E N T:

Both these appeals are being disposed of by common Judgment since both appeals are preferred against the same Judgment and Award. In First Appeal No.125/2004, the appellant is aggrieved by inadequacy of compensation granted in respect of the acquired land whereas in First Appeal No.85/2005, the appellant is aggrieved by the higher compensation granted to the respondents. The appeals are preferred against the Judgment and Award dated 15th March, 2004, passed by IInd Addl. District Judge, Panaji in Land Acquisition Case No. 209/96

2. Briefly, the facts which are relevant for disposal of these two appeals are as follows :

By Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act') dated 23.9.91,

published on 30.12.1991, the Government acquired 1,87,781 sq. metres of land for the purpose of construction of B.G. line between Roha - Mangalore. The said acquisition was for Konkan Railway Corporation Ltd. An area of 3150 sq. metres situated at Malar Village bearing Survey No.4/2(part) belonging to Jose Bismark Silveira (hereinafter, referred to as `the applicant') was part of acquired land. The Land Acquisition Officer, by Award dated 7.3.1994 awarded Rs.12/- per sq. metre in respect of the land belonging to the applicant. The applicant sought reference under Section 18 of the Act. In Land Acquisition Case No.209/96 before the IInd Addl. District Judge, North Goa, Panaji, the applicant examined three witnesses, namely Jose Mismark Silveira (AW.1), Dr. Edgar Silveira (AW.2) and Shri Prazeres Gonsalves (AW3). The applicant also produced Form I & XIV in respect of the acquired land, and sale deed dated 5.11.1985 in respect 900 sq. metres of land of Mallar Village. The applicant also produced a copy of the Sale Deed dated 24.10.1990 by which he sold a plot of land bearing Survey No.3/2 at the rate of 60/- per sq. metre. The applicant also produced Awards passed in Land Acquisition Case Nos. 148/96(Exhibit-20) and 211/96 (Exhibit-21). Prazeres Gonsalves (AW3) produced survey records and also sketch (Exhibit-23). The respondents examined Shri Anup Pednekar (RW.1) and Shri Vinay Naik (RW.2). The reference Court relied upon Sale Deed dated 24.10.1990 holding that the same was comparable to the acquired land and since the land was sold at the rate

of Rs.60/- per sq. metre in the year 1990, the reference Court fixed the market rate of the acquired land by increasing the value by 10 % and deducting 25 % thereafter on account of the mundkarial houses existing in the unacquired portion of the property bearing Survey No.4/2. The reference Court did not rely upon the Awards passed in the Land Acquisition Case Nos.148/96 and 211/96 on the ground that appeals against the said Awards were pending in this Court.

3. Mr. Diniz, learned Counsel appearing for the applicant submitted that the land bearing Survey No. 194 (part) which was subject-matter of the Award in Land Acquisition Case No.148/96 is comparable to the acquired land and, as such, the reference Court ought to have fixed the compensation on the basis of the said Award. The learned Counsel further submitted that the Award passed by the reference Court in Land Acquisition Case No.148/96 in respect of the property bearing Survey No.194(part) has been partly set aside by the Division Bench of this Court in First Appeal No.20/2003, and this Court has fixed the compensation payable in respect of the said land at the rate of Rs. 81/- per sq. metre. Mr. Diniz further submitted that the compensation at the rate of Rs.81/- per sq. metre has also been fixed by this Court in another appeal in respect of another part of Survey No.194. According to Mr.Diniz, the property bearing Survey No.194 is situated on the northern side of the acquired land which is just across the road and therefore

being closer to the acquired land and similar in nature, the reference Court ought to have fixed the compensation in respect of the acquired land on the basis of the Award passed in Land Acquisition Case No.148/96, relied upon by the applicant. According to Mr. Diniz, the Division Bench of this Court in First Appeal No.20/2003, has held that once compensation in respect of a particular land acquired by a Notification has been determined, in respect of other lands acquired by the same Notification, the same compensation has to be awarded. According to Mr. Diniz, there are no mundkarial houses existing in the unacquired portion of the land bearing Survey No.4/2 and, in any case, no deduction can be made for existence of mundkarial houses in unacquired portion of land and, therefore, the reference Court was not at all justified in deducting 25 % from the compensation fixed in respect of the acquired land.

4. Per contra, Mr. Afonso, learned Counsel appearing for the respondent in First Appeal No.125/2004, submitted that the applicant himself in cross examination has admitted that he sold one mundkarial house to a mundkar at the rate of Rs.10/- per sq. metre about a year back and, therefore, the reference Court ought to have rejected the reference. Mr. Afonso further submitted that in any event, the reference Court was absolutely justified in placing reliance on the sale deed dated 24.10.1990 for the purpose of fixing the compensation since the

applicant himself was party to the sale deed. According to the learned Counsel, the reference Court ought to have held that the applicant had not led any evidence to make out a case for higher compensation in respect of the acquired land. Placing reliance on the Judgment of the Apex Court, in ***Printers House Pvt. Ltd. vs. Mst. Saiyadan (Deceased) by LRs. and ors.*** ((1994) 2 SCC 133), the learned Counsel submitted that the reference Court was justified in relying upon Sale Deed dated 24.10.1990 being proximate in point of time. The learned Counsel further submitted that each case has to be decided on the basis of the evidence led in that particular case. Relying upon the Judgment of the Apex Court in ***Ravinder Narain and another vs. Union of India,*** ((2003) 4 SCC 481), the learned Counsel submitted that comparable sale method is the best method to assess the compensation in respect of the acquired land. The learned Counsel relied upon another Judgment of the Apex Court in ***Special Tehsildar Land Acquisition, Vishakapatnam vs. A. Mangala Gowri (Smt.),*** ((1991) 4 SCC 218) and submitted that the price paid in sale of same land under acquisition within period proximate to date of acquisition is a vital evidence which must be relied upon by the reference Court. According to the learned Counsel, in the present case, the sale deed dated 24.10.1990, which is produced by the applicant himself in respect of plot of land is proximate from the time factor considering that the Notification was issued in the present case in September, 1991. According to the learned Counsel,

the consideration mentioned in the sale deed of a plot in which the claimant himself is a party, is the best evidence to fix the compensation. In support of his submission, the learned Counsel relied upon the Judgment of the Apex Court in ***V. Subrahmanya Rao vs. Land Acquisition Zone Officer,*** ((2004) 10 SCC 640). According to Mr. Afonso, the entire Village of Mallar cannot be taken as one unit and same compensation cannot be paid in respect of different lands, although acquired by the same notification, especially when large tracts of lands are acquired by the same notification. In support of this submission, the learned Counsel relied upon the Judgment of the Apex Court in ***Basant Kumar and ors. vs. Union of India and ors.*** ((1996) 11 SCC 542). According to the learned Counsel, when the evidence regarding value of the acquired land is available, it is unnecessary to travel beyond that evidence.

5. In reply to the submissions made by Mr. Afonso, Mr. Diniz, learned Counsel appearing for the applicant submitted that the statement made by the applicant himself in the cross examination about the sale of mundkarial house to one of the mundkars at the rate of 10/- per sq. metre, cannot be considered since on a plain reading of the evidence, it is clear that the same was one year prior to recording of the deposition of the appellant which was recorded on 17.12.1998. According to Mr. Diniz, since the notification is of the year 1991, the price offered

in any sale deed which is post-notification, cannot be considered. In any event, the learned Counsel submitted that the sale was to a mundkar and the same cannot be compared to a sale of a property by a willing seller to a willing purchaser.

6. I have considered the submissions made by the learned Counsel for the parties. I have gone through records and the Judgments and Awards relied upon by the learned Counsel for the parties. In the present case, the reference Court preferred to rely upon the sale deed dated 24.10.1990 (Exhibit-11) in preference to sale deed dated 5.11.1985 or the Judgment and Award dated 6.9.2002 passed in Land Acquisition Case No.148/96, by the IInd Addl. District Judge, Panaji. No doubt the sale deed dated 24.10.1990 is in respect of a plot of land belonging to the applicant himself which forms part of the property bearing Survey No.3/2. Admittedly, the plot in the said sale deed is not part of the acquired land. There is absolutely no evidence brought on record that the acquired land is similar to the land in the sale deed dated 24.10.1990. That being the position, I find myself unable to agree with the approach of the reference Court in relying upon the sale deed dated 24.10.1990 in preference to the Award dated 6.9.2002 passed in First Appeal No. 148/96. The evidence of the appellant (AW.1) and Prazeres Gonsalves (AW.3) clearly establishes that the acquired land and the land in Land Acquisition Case No. 148/96 are comparable in nature. More

over, the land involved in Land Acquisition Case No.148/96 was also acquired by the same notification and is situated at a short distance on the northern side of the acquired land, separated by a road. More over, the Award passed in the said case, granting compensation at the rate of Rs.100/- per sq. metre, has been modified by the Division Bench of this Court by Judgment dated 28.9.2004, passed in First Appeal No.20/2003, fixing the compensation in respect of the said land at the rate of Rs.81/- per sq. metre. In view of this position, I am of the view that reliance can safely be placed on the Award passed by the Division Bench of this Court in First Appeal No.20/2003 (***Special Land Acquisition Officer and anr. vs. Mariano Caetano Clarimundo Francisco Jose de Piedade Menezes)*** fixing the compensation in respect of the property bearing Survey No.194(part) which is similar to the acquired land. In the absence of any evidence of comparability, the reference Court was not justified in placing reliance on the sale deed dated 24.10.1990 in preference to the Award in Land Acquisition Case No.148/96.

7. At this stage, it would be appropriate to quote relevant portions from paragraph 7 of the Judgment of the Apex Court in ***Printers House Pvt. Ltd. vs. Mst. Saiyadan (Deceased) by LRs. and ors.*** (supra). They are as under :

“7. Where there is evidence of sales or awards of lands(s), which could be compared with the acquired land(s), the Court, as a matter of course, adopts the `Comparable Sales Method of valuation of land', in preference to other recognised methods of valuation of lands, such as `Capitalisation of Net Income Method' or `Expert Opinion Method' for determining the market value of the acquired land (s). `Comparable Sales Method' is the most favoured method, since the prices paid within a reasonable time in bona fide transactions of purchase or sale of the very acquired land or a portion thereof, or of the lands adjacent to those acquired and possessing similar advantages, could furnish to the court the `price basis' for determination of the market value of the acquired land, in that, there can be no better evidence of what the willing purchaser would pay for the acquired land if it had sold in `the open market at the time of publication of preliminary notification'. Evidence of prices fetched by sales of lands similar to the acquired land will be taken by the Court to be the price which a willing purchaser would have paid for the acquired land, if the same had been sold to him in the open market.”..... “What applies to comparable sale, equally applies to comparable award, if such award is relied upon as that furnishing a price basis for determination of the market value of the land, cannot be disputed. Thus, the best evidence for determining the market value of the acquired land could be an

> authentic transaction of sale relating to the very acquired land or a portion thereof or any other land which could be favourably compared with the acquired land. The same would be the position when the available evidence relates to land covered by a previous award."

In view of the above ratio laid down in ***Printers House Pvt. Ltd.'s*** case (supra), in order to fix the compensation in respect of the acquired land, reliance can safely be placed on the Judgment of the Division Bench of this Court in First Appeal No.20/2003. Having regard to the evidence led before the reference Court in the present case, the compensation fixed in respect of the land bearing Survey No.194(part), can be taken as the basis for fixing the compensation in the present case. At this stage, it is pertinent to note that the applicant himself has stated in his evidence that there are three mundkarial houses in the unacquired portion of the land bearing Survey No.4/2. The sketch produced by Prazeres Gonsalves (AW.3) (Exhibit-23-colly) shows the existence of three mundkarial houses. The presence of three mundkarial houses in the unacquired portion of the property is definitely a minus factor for determining the compensation in respect of the acquired land. I am unable to accept the submission of Mr. Diniz that the mere fact that there are three mundkarial houses in the unacquired portion of the land is not a factor to reduce the compensation in respect of the acquired land. If the applicant was to develop the property bearing Survey

No.4/2, a considerable portion of his land would have to be reserved for mundkars, making provision for all the rights available to the mundkars under the Mundkar Act. Having regard to the location of these three mundkarial houses as depicted in the sketch (Exhibit-23 colly), it is evident that the applicant would not have been able to develop the entire property bearing Survey No.4/2, including the acquired portion. That being the position, I am of the view that the existence of three mundkarial houses is definitely a minus factor and reasonable deduction has to be made from the compensation otherwise payable in respect of the acquired land. Having regard to the total land of Survey No.4/2 and the location of three mundkarial houses in unacquired portion of land, I am of the view that deduction of 25 % would be justified. I also find considerable force in the submission of Mr. Diniz that the statement made by the applicant that he sold one of the mundkarial houses at the rate of Rs.10/- per sq. metre, cannot be relied upon by the respondent, since from the evidence it is clear that the said sale was one year prior to the deposition i.e. 17.12.1998 and as such, cannot be relied upon being sale transaction much after issuance of Section 4 notification. The statement also cannot be used against the applicant since the sale of mundkarial house by bhatkar to mundkar, cannot be equated to a sale by a willing seller to a willing purchaser. Accordingly, after deducting 25 % from Rs.81/-, the compensation payable in respect of the acquired land comes to Rs.61.25 per sq. metre.

I deem it appropriate to round it up to Rs.61/- per sq. metre. Accordingly, I hold that the compensation payable in respect of the acquired land as on the date of publication of Section 4 notification is Rs.61/- per sq. metre. The ratio laid down in the various Judgments relied upon by the learned Counsel for the respondent, except in the case of ***Printers House Pvt. Ltd.*** (supra) is not applicable in the present case having regard to the evidence on record.

8. In view of the above discussion, First Appeal No.125/2004 is partly allowed and First Appeal No.85/2005 is dismissed. The impugned Award is modified and compensation payable in respect of the acquired land is fixed at Rs.61/- per sq. metre. Needless to mention that the applicant will be entitled to all the statutory benefits under the Act. Having regard to the facts and circumstances of the case, the parties are left to bear their own costs.

A.P. LAVANDE, J.

ssm.